IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.584 of 2000

Date of Decision :22nd October, 2007.

State of H.P. …Appellant.

Versus:

Rattan Chand. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1] No

For the appellant: Mr.Virender Verma, Addl. Advocate General.

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For Respondent. Mr.Ajay Kumar, Advocate.

Sanjay Karol, J.

The present appeal arises out of the judgment dated 24th December, 1999 passed by Sub Divisional Judicial Magistrate, Rampur Bushahr in Criminal Case No.88/2 of 1998 titled as State of H.P. Vs. Rattan Chand acquitting the accused of the charged offence under Sections 279 and 304-A of the Indian Penal Code.

As per the case of the prosecution on 18th September, 1999 at about 5.20 P.M., near Paunta Tyre Factory at old Jhakri, H.P., the accused who was rashly and negligently driving Jeep No.HP 02-0009 met with an accident and hit the child on the road with the bumper of the jeep as a result of which the child (aged 4 years Hira Devi) died on the spot. Shri Dila Ram (PW-2) father of the

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

deceased filed a report Ext.PW-8/A on the basis of which F.I.R. No. 116/98 Ext.PW-8/D was registered under Sections 279 and 304-A I.P.C. with Police Station, Jhakri. The investigation was carried out and the post mortem report (Ext.PW-5/A) was obtained. The site plan (Ext.PW-8/C) was prepared and photographs Exts. P-1 to P-4 were also taken on record.

After completing the investigation the challan was presented in the Court for trial and the charges against the accused under Sections 279 and 304-A I.P.C. were framed. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as eight witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded.

On the basis of the material on record including the depositions of the witnesses, the court below acquitted the accused of the charged offence for the reason that none of the witnesses except PW-4 had witnessed the accident and the statement of PW-4 was also not that of an eye witness.

I have examined the statement of the witnesses as also the material on record. From the perusal of site plan (Ext.PW-8/C) as also the photographs (Exts. P-1 to P-4), it is clear that the road where the accident took place is quite wide. On the left hand side of the road construction material i.e. bricks & ground etc. is staked and the body of the deceased was lying just ad-joining to the construction material. The view in between and beyond the heaps of construction material is certainly obstructed.

Man Bahadur (PW-1) has admitted that he did not witness the occurrence of the accident. In fact the accident was narrated to him by Dila Ram (PW-2). He has admitted that spot where the accident took place is a busy road and there is heavy traffic on the same. Three vehicles can cross the road at a time. PW-2 has not supported the case of the prosecution and in fact was allowed to be cross-examined by the Public Prosecutor. In his extensive cross-examination nothing has come out which would even remotely suggest the complicity of the accused for the charged offence. Kanheya Lal (PW-3) is an expert who has mechanically examined the vehicle.

Smt. Bimla Devi (PW-4) is stated to have witnessed the occurrence of the accident. She has admitted that her house is below the road and the road where the accident took place is National Highway having heavy traffic and at the time of the occurrence of the accident she was standing out side her house and not on the road. Even though she has denied the suggestion that the deceased did not try to cross the road and accordingly come from the place where the construction material was staked, but, however, she has admitted that the girl was playing there. She has also admitted that PW-2 was sweeping the road at the site of the occurrence.

Dr.R.G.Negi (PW-5) has conducted the post mortem of the deceased and prepared report Ext.PW-5/A. He has admitted that the injury caused was not due to the crushing with the tyres of the vehicle and the same could be caused by hitting on the hard surface. ASI Garja Ram (PW-6), H.C.Puran Chand (PW-7) and H.C.Suraj Prakash (PW-8) are the police officials who have carried out the investigation. PW-8 has admitted that the height of the girl was 2 ½

feet and the height of the construction material staked was more than four feet.

It has come on record that PW-2 was actually the person who had witnessed the incident. Unfortunately, he has not supported the case of the prosecution at all. PW-4 has admitted that she was sitting opposite her house which was below the road level, even though she has witnessed the incident. However, in the absence of corroboration by PW-2, it cannot be concluded beyond reasonable doubt that the accused was guilty in the commission of the crime particularly when it has come on record through the statement of PW-4 that the deceased was playing on the road in between the place where the construction material was staked. The record shows that the height of the construction material was more than 4 feet i.e. much higher than the height of the girl. The road was quite wide and it is a National Highway. From the record one thing is clear that no skid marks have been found at the site. The absence of the same would only show that the accused was not driving his vehicle rashly and negligently. In fact even PW-4 has not stated that the vehicle was at great speed. Mere occurrence of an accident in itself would not be a ground to hold the accused guilty of the charged offence for driving the vehicle rashly and negligently endangering the human life.

There is no perversity in the appreciation of the material on record by the Court below. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

October 22, 2007(R)